

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SIDIROPOULOS, Minors.

UNPUBLISHED

October 8, 2013

No. 313870

Livingston Circuit Court

Family Division

LC No. 12-014031-NA

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to EHS, ES, and GS based on MCL 712A.19b(3)(g) (proper care and custody), MCL 712A.19b(3)(j) (reasonable likelihood of harm), and MCL 712A.19b(3)(k)(ii) (prior criminal sexual conduct). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent resides in Greece. Petitioner filed a petition requesting termination of respondent's rights in 2012. The minor children were living with their mother in Livingston County; the mother was not named as a respondent. Petitioner alleged that the court had jurisdiction under MCL 712A.2(b)(1) and (2), which reads in relevant part as follows:

Sec. 2. The court has the following authority and jurisdiction:

* * *

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

The petition alleged that the children (citizens of the United States and Greece) and the mother resided with respondent in Greece until June 2011, when the children and the mother moved to Livingston County, Michigan, where they resided at the time the petition was filed. The petition contained allegations that respondent had sexually abused ES and included statements made by ES in a forensic interview in 2012. The petition also contained allegations, supported by statements from GS and respondent's adult daughter, that respondent inappropriately touched his adult daughter and ES and was physically abusive towards the children's mother and his daughters.

At the preliminary hearing on February 3, 2012, respondent's appointed counsel explained that he had not yet talked to respondent. The court adjourned the preliminary hearing so that counsel could arrange for international telephone calls with respondent. Before the adjournment, petitioner informed the court that respondent had apparently threatened to kill the mother and the children, so the court ordered that the mother's address remain confidential on court documents. The court also ordered the mother (with her consent) to surrender the children's passports so that respondent would be unable to remove the children from the country.

On February 6, 2012, respondent's counsel filed a two-page appearance on respondent's behalf. He requested a jury trial, a speedy trial, attorney presence at any meeting that may affect respondent, and discovery of numerous documents related to the case.

At the preliminary hearing on February 8, 2012, respondent appeared by telephone, as he did throughout the proceedings. Respondent explained that while his native language is Greek, he can generally communicate in English as well. When asked by the court whether he had received a copy of the petition, respondent stated, "I received an email copy of that yes." The court adjourned the preliminary hearing so counsel could obtain an interpreter; before doing so, the court observed that a personal protection order (PPO) that had been entered against respondent by at the request of the children's mother, in August 2011, remained in effect.¹

At the preliminary hearing on February 22, 2012, respondent again stated that he had received a copy of the petition. Respondent also stated that he had received additional court documents by email, including the documents necessary to request a court-appointed attorney.

Thomas Brideau of the Department of Human Services Children's Protective Services Division testified at the preliminary hearing and reiterated the allegations of abuse regarding ES that were set forth in the petition. Brideau observed that the abuse allegedly occurred in Greece, and that the children were now residing with the mother in the United States. When respondent

¹ The PPO was not provided to this Court. The mother's testimony at the jurisdictional trial was unclear as to what the PPO actually prohibited respondent from doing.

questioned Brideau about the children's home in the United States, Brideau indicated that the home was satisfactory.

At the conclusion of the preliminary hearing, respondent argued that the court should not authorize the petition because the abuse allegedly occurred several years prior in a foreign country, and the children's present home was satisfactory. The court decided to authorize the petition, reasoning in relevant part:

I do find probable cause to believe that one or more of the allegations if true due [sic] rise to a level to believe that the children fall under MCL 712a.2(B)(1) and or (B)(2). Jurisdiction is proper. The children are present in this county. Whether or not alleged abuse or neglect occurred elsewhere they're found within this county. I do find that there is a substantial risk of harm to the children in the custody of their father based on the testimony today by a probable cause standard

Accordingly, the court authorized the petition and allowed the children to remain with the mother.

In an order dated March 14, 2012, the trial court ordered that the pretrial hearing be adjourned to April 16, 2012. The order required that petitioner accomplish "proper service" on respondent, and directed the parties to brief whether respondent had been properly served, whether the court had personal jurisdiction over respondent, and whether "the Hague Convention applies to the instant proceedings."

On April 3, 2012, respondent filed a brief on several issues, including personal jurisdiction and service of process. In relevant part, respondent argued that he was not personally served with the summons and petition pursuant to MCL 712A.12, MCL 712A.13, or MCR 3.920(A). Respondent also argued that under the "Hague Convention on the Civil Aspects of International Child Abduction," the children should be returned to Greece.

At the pretrial hearing on April 16, 2012, Brideau testified that he attempted to provide the petition (but not the summons) to respondent through email. Brideau also sent a copy of the petition through certified mail to the Greek Embassy in Chicago and faxed a copy of the petition to the local police in Greece. Respondent stated that he received a copy of the petition through email alone.

The court found that personal service had not been accomplished. The court also found that personal service was impracticable, so it ordered petitioner to send a copy of the petition to respondent's last known address by registered mail. The court observed that respondent had not waived service in writing.

At the pretrial hearing on May 11, 2012, the court explained that it could obtain personal jurisdiction over respondent by alternative service in accordance with MCL 712A.13. However, because Brideau had mailed a copy of the petition to an incorrect address after the last hearing, the court ordered petitioner to mail a copy of the petition to the correct address. The court stated that it would dismiss the action if Brideau again failed to mail a copy of the petition to the correct address.

At the pretrial hearing on July 13, 2012, Brideau testified that he sent by registered mail, return receipt requested, a copy of the summons and petition to respondent's last known address in accordance with the court's earlier orders. The court found that service had been accomplished pursuant to MCL 712A.13, and concluded that it had personal jurisdiction.

At the jurisdictional trial, respondent's adult daughter testified that when the family resided together in Greece, respondent occasionally struck her mother and caused bruises, and on one occasion threw a plate of spaghetti in her face. She testified that respondent inappropriately touched her, although it was not clear how old she was when these events occurred.² She also agreed that at the time of trial, her siblings were living in a satisfactory household with her mother. She was aware that in August 2011, her mother obtained a personal protection order against respondent.

GS testified that when the family resided together in Greece, respondent occasionally "play[ed] with himself while in the house. Just out like in the living room." GS explained that respondent "had a tendency" to "play the drums" on his sisters' rear ends. GS last saw respondent "play the drum" on ES's rear end about April 2011, two months before he, his mother, and his siblings moved to Michigan.

ES testified that between the ages of five and eleven, respondent touched her private parts. She explained that between the ages of five and seven, respondent occasionally entered her bedroom while she was in bed, removed her underwear, "[a]nd then like I could feel something soft and (indecipherable) like going in and out of my behind." One morning after respondent entered her bedroom, ES awoke with blood in her underpants.

The children's mother testified that within a week after arriving in Michigan with her children, she sought assistance from Children's Protective Services. She indicated that she decided to leave Greece with her children and seek assistance in Michigan because of respondent's regular verbal and physical abuse.

Respondent denied that he ever touched his children's rear ends on the "bare skin," but he admitted that he played "an old Indian drum" game over their clothes. Respondent denied that he was a threat to his children.

The jury found that one or more of the following statutory grounds for jurisdiction had been proven by a preponderance of the evidence:

- (1) Respondent, when able to do so, neglected or refused to provide proper or necessary support, medical, surgical or other care necessary for the children's health or morals [MCL 712A.2(b)(1)];

² The adult daughter did testify that these events occurred prior to her attending college in the United States.

(2) The children were subject to a substantial risk of harm to their mental well-being [MCL 712A.2(b)(1)]; or

(3) The children's home environment was an unfit place for them to live in by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of respondent [MCL 712A.2(b)(2)].

At the dispositional hearing, the court found that the following statutory grounds for termination had been proven by clear and convincing evidence:

(1) Respondent, without regard to intent, failed to provide proper care or custody for the children and there is no reasonable expectation that he will be able to provide proper care and custody within a reasonable time considering the children's ages [MCL 712A.19b(3)(g)];

(2) There is a reasonable likelihood, based on the conduct or capacity of respondent, that each of the children will be harmed if he or she is returned to respondent's home [MCL 712A.19b(3)(j)]; and

(3) Respondent abused [ES] and that abuse included criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate [MCL 712A.19b(3)(k)(ii)].

The court found by clear and convincing evidence that it was in the best interests of the children to terminate respondent's parental rights.

II. SUBJECT-MATTER JURISDICTION

Respondent alleges that the trial court erred in authorizing the petition because it lacked subject-matter jurisdiction over the case. This Court reviews de novo whether a court has subject-matter jurisdiction. *Usitalo v Landon*, 299 Mich App 222, 228; 829 NW2d 359 (2012). We conclude that the trial court possessed the jurisdiction to authorize the petition under MCL 712A.2(b).

[A] family court has subject-matter jurisdiction when the allegations in the petition provide probable cause to believe that it has statutory authority to act because the child's parent or guardian neglected the child, failed to provide a fit home, or committed any of the other conduct described in the statute. Whether the allegations are later proved true is irrelevant to whether the family court has subject-matter jurisdiction. [*In re AMB*, 248 Mich App 144, 168; 640 N.W.2d 262 (2001).]

A family court's subject matter jurisdiction "'is established when the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous.'" *In re AMB*, 248 Mich App at 167-168; 640 NW2d 262 (2001), quoting *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993).

Jurisdiction of the trial court in termination cases is granted by MCL 712A.2, which provides in pertinent part:

Sec. 2. The court has the following authority and jurisdiction:

* * *

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

At the preliminary hearing, the trial court must determine whether there is probable cause to authorize the petition by determining “that the facts of a particular case place a child within the specific provisions” of MCL 712A.2(b). *In re Hatcher*, 443 Mich at 433.

It is not disputed that when the petition was filed, the children resided in a satisfactory household in Livingston County, Michigan with the mother. Further, it is not disputed that the petition reflected allegations showing the unsuitability of respondent’s household in Greece at least seven months before the petition was filed. The underlying issue is whether the trial court had probable cause to believe the children were within the specific provisions of either MCL 712A.2(b)(1) or (2).

Here the petition alleged that respondent sexually abused ES and inappropriately touched his adult daughter and physically abused his children’s mother and his daughters. The petition also alleged that the children would be harmed if returned to respondent, that he abused and sexually assaulted the children, and that he had failed to provide proper care and custody of the children. At the preliminary hearing, the trial court heard testimony regarding respondent’s sexual abuse of ES, his inappropriate touching of his adult daughter, and physical abuse of the children. The trial court also received information that respondent had threatened to kill the mother and the children, and ordered that the mother’s address remain confidential and that the children surrender their passports to prevent their removal from the country. The trial court also heard that a PPO was currently in effect against respondent.

We conclude that the trial court received sufficient evidence to conclude that there was probable cause to believe that the facts of this case placed the children within particular provisions of MCL 712A.2(b)(1) or (2). The trial court specifically noted that respondent posed

a substantial risk of harm to the children's physical and mental well being based on testimony supporting the allegations of physical abuse, sexual abuse, and domestic violence. See *In re Hatcher*, 443 Mich at 437 ("Here, the petition alleged neglect, criminality, drunkenness, and a failure to maintain proper custody and guardianship of the infant. When the referee considered the facts alleged in the petition and the testimony presented, he found probable cause that the allegations were true. Consequently it was proper for the court to invoke its jurisdiction . . .").

Respondent argues that this Court's decision in *In re MU*, 264 Mich App 270; 690 NW2d 495 (2004) compels reversal of the trial court. We disagree.

In *In re MU*, this Court addressed the respondent's argument that the trial court erred in determining that it possessed jurisdiction over the case under MCL 712A.2(b)(1) (child "subject to a substantial risk of harm to his or her mental well-being") and (b)(2) (child's home unfit by reason of criminality). *Id.* at 278. This Court stated:

We first briefly address the respondent's rather unremarkable argument that the petitioner must establish that criminality rendered the home or environment unfit at the time the petition was filed. The statute speaks in present tense, and, therefore, the trial court must examine the child's situation at the time the petition was filed. [*Id.* at 278-279.]

This Court went on to state that in order to assert jurisdiction, the petitioner "must demonstrate by a preponderance of the evidence only that the respondent *engaged* in criminal behavior" and that the lack of a conviction for criminal behavior did not "preclude [the trial court] from determining that a preponderance of the evidence demonstrates that the respondent *engaged* in criminal behavior and that the behavior *has rendered* the home or environment unfit." *Id.* at 279 (emphases added).

In re MU dealt with the trial court's *exercise* of jurisdiction, not the establishment of jurisdiction. See *In re Hatcher*, 443 Mich at 437-438 ("jurisdiction is initially established by pleadings, such as the petition, rather than by later trial proceedings that may establish by a preponderance of the evidence that a child is within the continued exercise of the probate court's subject matter jurisdiction.") Moreover, although *In re MU* does state that a trial court must examine the child's situation at the time the petition is filed, it does not preclude, and indeed approves of, a finding that jurisdiction may be exercised based on past criminality or an ongoing substantial risk of harm to mental well-being. *In re MU*, 264 Mich App at 279.

III. SERVICE OF PROCESS

Respondent next argues that the trial court failed to obtain personal jurisdiction over him. We hold that petitioner has waived this issue.

Generally, this Court reviews de novo whether a trial court has personal jurisdiction over a party. *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004). This Court also reviews de novo the interpretation and application of court rules. *Peters v Gunnell, Inc.*, 253 Mich App 211, 225; 655 NW2d 582 (2002).

Under MCL 712A.12 and MCR 3.920(B)(4)(a), “[a] parent of a child who is the subject of a child protective proceeding is entitled to personal service of a summons and notice of proceedings.” *In re SZ*, 262 Mich App at 564. However, when personal service is “impracticable,” substituted service is permissible under MCL 712A.13. *Id.* at 565. MCL 712A.13 reads in relevant part as follows:

Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. *It shall be sufficient to confer jurisdiction if . . . registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state* [Emphasis added.]

“A failure to provide notice of a termination proceeding hearing by personal service as required by statute . . . is a jurisdictional defect that renders all proceedings in the trial court void.” *In re Atkins*, 237 Mich App 249, 250-251; 602 NW2d 594 (1999).

“[A] party who enters a general appearance and contests a cause of action on the merits submits to the court’s jurisdiction and waives service of process objections.” *In re Gordon Estate*, 222 Mich App at 158. An appearance occurs when a party has knowledge of the pending proceedings and shows the intent to appear. *Id.* at 158 n 9. Thus, because respondent appeared by telephone at the February 8, 2012 hearing without any objection to personal jurisdiction or service of process, he waived any issue regarding lack of personal jurisdiction or improper service of process. See *In re Gillespie*, 197 Mich App 440, 447; 496 NW2d 309 (1992) (“[W]e believe that the general rules governing waiver of service of process objections should apply in termination proceedings . . .”).

Although we find that respondent waived any challenge to the court’s assumption of personal jurisdiction, we note also that the trial court did not err in determining that personal service was “impracticable” in this case. See *In re Adair*, 191 Mich App 710; 478 NW2d 667 (1991). It is not disputed that the court correctly found on July 13, 2012 that petitioner complied with its previous orders by mailing the summons and petition to respondent by registered mail to his last known address within 14 days of the pretrial hearing as provided by MCL 712A.13. It is also not disputed that respondent resided in Greece before and during the proceedings.

Respondent argues that MCL 712A.13, by its plain terms, only applies to service within Michigan. However, this Court has held that MCL 712A.13 conveys jurisdiction over a respondent when notice is mailed to the respondent in another state. *In re Mayfield*, 198 Mich App 226, 233 (1993) (registered mail to a Mississippi address satisfied MCL 712A.13 and thus conveyed jurisdiction). Here, personal service was “impracticable” because respondent was not only out of the state, but out of the country as well. See *In re Adair*, 191 Mich App 714. Moreover, the record shows that petitioner made efforts to personally serve respondent. These efforts included contacting the Greek Consulate and the local police in Greece. Respondent has not identified any additional efforts that could have effectuated personal service, but for an international process server. However, respondent has presented no authority to suggest that a

trial court is required to order the services of an international process server instead of ordering registered mail. To the contrary, this Court has indicated that registered mail is an appropriate method of service for an out-of-state respondent under MCL 712A.13. *Id.*

IV. DUE PROCESS AND THE HAGUE CONVENTION

We also note that the court's exercise of personal jurisdiction did not raise due process concerns. See *Int'l Shoe Co v Washington*, 326 US 310; 66 S Ct 154; 90 L Ed 95 (1945); see also *Shaffer v Heitner*, 433 US 186, 201; 97 S Ct 2569; 53 L Ed 2d 683 (1977). The children resided in Michigan when the petition was filed, and Michigan has a strong interest in protecting the welfare of children. See *In re Ramsey*, 229 Mich App at 314. Respondent received a variety of procedural protections throughout the proceedings. Respondent had actual notice of the proceedings, was appointed counsel, received the services of an interpreter, and is exercising an appeal by right following the proceedings. Given these procedural protections, respondent's due-process rights were not violated.

Finally, respondent argues that the trial court erred in failing to apply the Hague Convention in ordering service of process. Respondent does not identify or explain how the trial court should have proceeded under the Hague Convention, and does not explain how any failure to do so operated to deprive the trial court of personal jurisdiction. When a party does not provide supporting legal authority for his or her argument, reversal is not warranted. *Berger v Berger*, 277 Mich App 700, 715; 747 NW2d 336 (2008).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra